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UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

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In re	:	
	:	Chapter 11
WORLDCOM, INC., et al.,	:	Case No. 02-13533 (AJG)
	:	
	:	(Jointly Administered)
	:	
Debtors.	:	
	:	
MCI WORLDCOM	:	
COMMUNICATIONS, INC. f/k/a	:	
WORLDCOM TECHNOLOGIES, INC.,	:	
	:	
Plaintiff / Appellee	:	
	:	
v.	:	Adversary Proceeding No. 04-04338 (AJG)
	:	
COMMUNICATIONS NETWORK	:	
INTERNATIONAL, LTD.,	:	
	:	
Defendant / Appellant	:	
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**APPELLEE'S DESIGNATION OF ADDITIONAL  
 ITEMS TO BE INCLUDED IN RECORD ON APPEAL**

Pursuant to Fed. R. Bankr. P. 8006, Appellee, the above-captioned Appellee, MCI Worldcom Communications, Inc. n/k/a MCI Communication Services, Inc. ("WorldCom") submits the following Designation of Additional Items to be Included in the Record on Appeal.

## **INTRODUCTION**

1. On July 8, 2008, Communications Network International, Ltd. ("CNI") filed a notice of appeal (dkt. no. 88) of the Bankruptcy Court's orders dated March 13, 2006, July 9, 2007, September 6, 2007, December 7, 2007, January 9, 2008, April 30, 2008, June 18, 2008 and June 25, 2008.<sup>1</sup>

2. Thereafter, CNI filed its designation of items to be included in this appeal and its statement of the issues pursuant to Fed. R. Bankr. P. 8006 (the "Designation").

3. WorldCom hereby submits its Designation of Additional Items to be Included in the Record on Appeal (the "Counter-Designation").

## **OBJECTIONS TO ITEMS DESIGNATED BY CNI**

4. In its Designation of Items to be Included in the Record on Appeal, CNI identifies the following: "Deposition transcripts with exhibits form [sic] the depositions of Curtis Cook (Exhibits 1-41), Larry Willis (Exhibits 1-9) Joe Coffey, Harry [sic] Donahue (all marked exhibits), Mary Green (exhibits 1-14)".

5. These documents are not a part of the record in this case and were not offered or submitted by either CNI or WorldCom. As a consequence, these documents are not properly designated and should not be included in the record on appeal. See In re Chateaugay Corp., 64 B.R. 990, 995 (S.D.N.Y. 1986) (stating that the record on appeal should contain only those documents and evidence bearing on the proceedings below and considered by the bankruptcy judge in reaching his decision); and In re Nat'l Century Fin. Enterprises, Inc., 334 B.R. 907, 912

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<sup>1</sup> CNI filed two notices of appeal in the above-captioned adversary proceeding (Dkt. Nos. 88, 89). Thereafter CNI filed two separate designations – one for each appeal. As a consequence, WorldCom hereby files two separate counter-designations.

(Bankr. S.D. Ohio 2005) (finding that bankruptcy court has the authority to strike from the record materials that the bankruptcy court never considered and that were never placed before it).

**ADDITIONAL ITEMS TO BE DESIGNATED FOR RECORD ON APPEAL**

6. Order signed on October 31, 2003, Confirming Debtors' Modified Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code with attached Debtors' Modified Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, Dated October 21, 2003. (**Case No. 02-13533, Docket No. 9686**).

7. Proof of Claim 22183 filed by CNI in Case No. 02-13533.

8. WorldCom's Twenty-Eighth Omnibus Objection to Proofs of Claim, including claim of CNI, filed September 8, 2004. (**Case No. 02-13533, Docket No. 12407**).

9. CNI's Response to WorldCom's Twenty-Eighth Omnibus Objection to Proofs of Claim. (**Case No. 02-13533, Docket 12604; Case No. 04-4338, Docket No. 4, Exhibit B**).

10. October 12, 2004, Complaint and Claim Objection by WorldCom against CNI. (**Case No. 04-4338, Docket No. 1**).

11. July 19, 2002, Complaint filed by WorldCom against CNI in the United States District Court for the Eastern District of Pennsylvania. (**Case No. 04-4338, Docket No. 1, Exhibit A**).

12. February 14, 2001, Complaint filed by WorldCom against CNI in the United States District Court for the Eastern District of Pennsylvania. (**Case No. 04-4338, Docket No. 1, Exhibit B**).

13. Rebiller Agreement between WorldCom and CNI. (**Case No. 04-4338, Docket No. 1, Attachment to Exhibit B**).

14. CNI's Answer to Complaint and Claim Objection. (**Case No. 04-4338, Docket No. 4**).

15. April 4, 2001, Answer and Counterclaim by CNI in Case No. 01-762. (**Case No. 04-4338, Docket No. 4, Exhibit A**).

16. Scheduling Order signed on 2/14/2005 regarding claim no. 22183. (**Case No. 04-4338, Docket No. 10**).

17. Motion for Summary Judgment filed by WorldCom. (**Case No. 04-4338, Docket No. 44**).

18. Rebiller Agreement between WorldCom and CNI. (**Case No. 04-4338, Docket No. 44, Exhibit 1**).

19. Affidavit of Julie R. Earsom. (**Case No. 04-4338, Docket No. 44, Exhibit 2**).

20. Memorandum of law in support of WorldCom's Motion for Summary Judgment. (**Case No. 04-4338, Docket No. 45**).

21. CNI's Opposition to Motion for Summary Judgment. (**Case No. 04-4338, Docket No. 46**).

22. First Declaration of Curtis Cooke. (**Case No. 04-4338, attached to Docket No. 46**)

23. Exhibit A to First Declaration of Curtis Cooke. (**Case No. 04-4338, attached to Docket No. 46**).

24. Exhibit B to First Declaration of Curtis Cooke. (**Case No. 04-4338, attached to Docket No. 46**)

25. Exhibit C to First Declaration of Curtis Cooke. (**Case No. 04-4338, attached to Docket No. 46**)

26. Reply to CNI's Opposition to WorldCom's Motion for Summary Judgment. (**Case No. 04-4338, Docket No. 47**).

27. Portion of Bruce Donahue Deposition Transcript. (**Case No. 04-4338, Docket No. 47, Exhibit 1**).

28. Second Declaration of Curtis Cooke in Opposition to Motion for Summary Judgment. **(Case No. 04-4338, Docket No. 48).**

29. Exhibit 1 to Second Declaration of Curtis Cooke. **(Case No. 04-4338, Docket No. 48).**

30. Exhibit 2 to Second Declaration of Curtis Cooke. **(Case No. 04-4338, Docket No. 48).**

31. Exhibit 3 to Second Declaration of Curtis Cooke. **(Case No. 04-4338, Docket No. 48).**

32. Exhibit 4 to Second Declaration of Curtis Cooke. **(Case No. 04-4338, Docket No. 48).**

33. Exhibit 5 to Second Declaration of Curtis Cooke. **(Case No. 04-4338, Docket No. 48).**

34. Exhibit 6 to Second Declaration of Curtis Cooke. **(Case No. 04-4338, Docket No. 48).**

35. CNI's Response to WorldCom's Statement of Undisputed Facts. **(Case No. 04-4338, Docket No. 49).**

36. CNI's Motion to allow Sur-Reply Brief to WorldCom's Reply Memorandum. **(Case No. 04-4338, Docket No. 50).**

37. Transcript of Hearing Held on March 6, 2007, regarding WorldCom's Motion for Summary Judgment and CNI's Motion for Leave to File Sur-Reply Brief. **(Case No. 04-4338, Docket No. 51).**

38. Opinion signed on July 9, 2007, granting, in part, WorldCom's Motion for Summary Judgment and granting, in part, CNI's Motion for Leave to file a Sur-Reply Memorandum. **(Case No. 04-4338, Docket No. 52).**

39. Order signed on September 6, 2007, granting, in part, WorldCom's Motion for Summary Judgment and granting, in part, CNI's Motion for Leave to File a Sur-Reply Memorandum. **(Case No. 04-4338, Docket No. 56).**

40. WorldCom's Motion to Strike CNI's Demand for a Jury Trial. **(Case No. 04-4338, Docket No. 57).**

41. Memorandum of Law in support of WorldCom's Motion to Strike CNI's Jury Demand. **(Case No. 04-4338, Docket No. 58).**

42. CNI's Opposition to WorldCom's Motion to Strike Jury Demand. **(Case No. 04-4338, Docket No. 59).**

43. Opinion signed on December 7, 2007, granting WorldCom's Motion to Strike CNI's demand for jury trial. **(Case No. 04-4338, Docket No. 61).**

44. Order signed on January 9, 2008, granting WorldCom's Motion to Strike CNI's demand for jury trial. **(Case No. 04-4338, Docket No. 63).**

45. Joint Pre-Trial Order signed on February 11, 2008. **(Case No. 04-4338, Docket No. 64).**

46. Motion in Limine filed by WorldCom to exclude certain claims and evidence of CNI. **(Case No. 04-4338, Docket No. 65).**

47. Memorandum of Law in support of WorldCom's Motion in Limine. **(Case No. 04-4338, Docket No. 66).**

48. CNI's Opposition to WorldCom's Motion in Limine. (**Case No. 04-4338, Docket No. 67**).

49. WorldCom Trial Exhibit WC 1 – Intelenet Service Agreement between WorldCom and CNI.

50. WorldCom Trial Exhibit WC 2 – Rebiller Service Agreement between WorldCom and CNI.

51. WorldCom Trial Exhibit WC 3 – International Telecommunications Service Tariff.

52. WorldCom Trial Exhibit WC 3A – One page from International Telecommunications Service Tariff.

53. WorldCom Trial Exhibit WC 4 – Interstate Domestic Tariff

54. WorldCom Trial Exhibit WC 4A – One page from Interstate Domestic Tariff.

55. WorldCom Trial Exhibit WC 5 – Revised Spreadsheet of charges and credits to CNI created by Sondra Allison.

56. WorldCom Trial Exhibit WC 6 – Original spreadsheet of charges and credits to CNI.

57. WorldCom Trial Exhibit WC 7 – June 1, 1999, letter from WorldCom to CNI.

58. WorldCom Trial Exhibit WC 8 – March 26, 1999, letter from WorldCom to CNI.

59. WorldCom Trial Exhibit WC 9 – Copy of page from WorldCom invoice to CNI.

60. WorldCom Trial Exhibit WC 10 – Affidavit of Mark Shaiken for Stinson Morrison Hecker LLP in support of claim for attorney fees.

61. CNI Trial Exhibit D2 – Donahue Document.

62. CNI Trial Exhibit D3 – October 20, 1998, Letter to CNI from WorldCom

63. CNI Trial Exhibit D4 – June 1, 1999, Letter to CNI from WorldCom

64. CNI Trial Exhibit D5 – May 27, 1999, Letter to CNI from WorldCom

65. CNI Trial Exhibit D7 – December 11, 1998, Letter to CNI from WorldCom
66. CNI Trial Exhibit D8 – May 27, 1998, email from WorldCom to CNI.
67. CNI Trial Exhibit D15 – August 10, 1998, Letter from WorldCom to CNI.
68. CNI Trial Exhibit D18 – Summary Notes by Curtis Cooke
69. CNI Trial Exhibit D19 – Copy of Invoice
70. Transcript of Hearing Held On February 19, 2008 At 9:57 a.m. regarding WorldCom's Motion In Limine To Exclude Claims Of Communications Network International, Ltd; and Trial regarding Damages owed by CNI to WorldCom. **(Case No. 04-4338, Docket No. 68).**
71. Opinion, after trial signed on April 30, 2008, regarding WorldCom's Motion in Limine and request for damages. **(Case No. 04-4338, Docket No. 71).**
72. Notice of Withdrawal of WorldCom's Claim for attorneys' fees for Buchanan Ingersoll & Rooney, P.C. **(Case No. 04-4338, Docket No. 72).**
73. Letter from WorldCom regarding Proposed Order and Calculations of Future Interest. **(Case No. 04-4338, Docket No. 77).**
74. CNI's Motion to Withdraw Notice of Appeal filed on May 22, 2008. **(Case No. 04-4338, Docket No. 77).**
75. Letter from CNI regarding calculations of future interest. **(Case No. 04-4338, Docket No. 81).**
76. WorldCom's Memorandum of Law in support of Proposed Order and calculations of future interest. **(Case No. 04-4338, Docket No. 82).**
77. CNI's Memorandum of Law in Response to WorldCom's Memorandum of Law regarding interest calculations. **(Case No. 04-4338, Docket No. 83).**



78. Opinion signed on June 18, 2008, regarding CNI's objection to WorldCom's proposed order and interest calculations. **(Case No. 04-4338, Docket No. 84).**

79. Order signed on June 18, 2008, awarding damages, interest and attorneys' fees to WorldCom. **(Case No. 04-4338, Docket No. 85).**

80. Judgment in favor of WorldCom signed on June 18, 2008, entered on June 25, 2008. **(Case No. 04-4338, Docket No. 87).**

81. Notice of Appeal filed by CNI on July 8, 2008. **(Case No. 04-4338, Docket No. 89).**

82. All other items designated by CNI or as may be required based on CNI's arguments on appeal.

Dated July 31, 2008.

Kansas City, Missouri

Respectfully submitted,

STINSON MORRISON HECKER LLP

By: /s/ Mark A Shaiken

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ATTORNEYS FOR APPELLEE

**CERTIFICATE OF SERVICE**

I hereby certify that on July 31, 2008, I electronically filed the foregoing with the Clerk of the Bankruptcy Court using the CM/ECF system, which sent notification of such filing to all parties receiving electronic means, and by email to:

W. Mark Mullineaux, Esq.  
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Attorneys for the Defendant

/s/ Mark A Shaiken  
Attorney for Plaintiff